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Panaji, 25th February, 2008 (Phalguna 6, 1929)

SERIES II No. 47

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT
No. 2

GOVERNMENT OF GOA

Department of Labour

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Notification

No. 28/18/2007-LAB/19

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 23-11-2007 in reference No. IT/94/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 3rd January, 2008.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI-GOA

(Before Shri Dilip K. Gaikwad, Presiding Officer)

Case No. IT/94/2000

Escolastica Gracias,
Igreja Waddo,
Carmona-Goa. — Workman/Party I

V/s

M/s. Royal Goa Beach Resort Ltd.,
Colvaddo, Benaulim,
Salcete-Goa. — Employer/Party II

Party I/Employee is represented by Subhash Naik.

Party II/Employer is represented by Adv. M. S. Bandodkar.

AWARD

(Passed on this 23rd day of November, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

Facts giving rise to the present reference, stated in brief, are as follows:-

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 24-11-2000, has referred to this Industrial Tribunal following dispute for adjudication:-

"(I) Whether Ms. Escolastica Gracias, Personnel Executive/Secretary, could be construed as "Workman" as defined under the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?

(II) (1) If answer to the above is in the affirmative, than, whether the action of the management of M/s. Royal Goan Beach Resorts Limited, Colvaddo, Benaulim-Goa, in terminating the services of Ms. Escolastica Gracias, with effect from 11-7-2000, is legal and justified?

2. If not, to what relief the workman is entitled?''

2. In response to notices, both parties put their appearance in this Industrial Tribunal. Party I presented her claim statement on 22-1-2001 at Exb. 3. It appears from claim statement that the Party II is Time Share Hotel Resorts consisting of 49 luxurious rooms. The Party I was appointed as a Personnel Secretary/Supervisor in establishment of Party II w. e. f. 15-1-1996. She was confirmed in the service on 1-8-96. She was promoted to the post of Personnel Executive/Secretary by Party II under its letter dated 1-1-1999. She was confirmed as Personnel Executive/Secretary w.e.f. 1-8-1999. She was

working in establishment of Party II honestly and efficiently under supervision of Personnel Manager Ms. Loyola Fernandes without giving opportunity for complaint. Nobody was working under her control. She was doing work of maintaining ESI Contribution Register, Leave Register, Register of Employment, Overtime Register, Salary Register, Register of Advances paid to staff members. Medical/L. T. A. forms, preparing ESI challans, filing returns of declaration form of ESI, maintaining stores requisition book, Compensatory Off Register pertaining to employees, filing of ESI Returns and Labour Welfare Fund Returns, preparing of clearance memo pertaining to those employees who were leaving services of the hotel, typing appointment/ /confirmation/promotion letters of staff, correspondence of the hotel etc., preparing of computerized salary slips of all staff members as well as that of the Managers, maintaining medical/L. T. A. registers of staff members/ /managers, calculating leave of staff members, managers as well as their compensatory off, completing joining formalities of new employees in the hotel, issuing of uniforms and lockers and of preparation of joining reports, E. S. I. details, issuance of name tags, checking certificate and other details of new candidates. Thus, the duties which she was discharging in establishment of the Party II were purely of clerical nature. She did not discharge either supervisory or managerial duties. The Party II suddenly restrained her from joining duty w.e.f. 11-7-2000. She received on 13-7-2000 letter dated 11-7-2000 whereunder, Party II informed her that her services have been terminated w.e.f. 11-7-2000. The letter was accompanied with cheque of Rs. 5,522.60 paise towards earned wages, notice pay, leave encashment and pro-rata medical and leave travelling allowance. She sent letter on 15-7-2000 and requested the Party II to reinstate her in service with full back wages and with continuity of service. She returned the said cheque of Rs. 5,522.60 paise with this letter. The Party II did not consider her request. By sending letter on 2-8-2000, she raised a dispute before the Deputy Labour Commissioner, Government of Goa, at Margao. Conciliation proceedings held by the Deputy Labour Commissioner, Margao, ended in failure. Therefore, the Government of Goa under order dated 24-11-2000 has referred the dispute to this Industrial Tribunal for adjudication as stated earlier.

3. According to the Party I, she is a 'workman' as defined under Sec. 2-(S) of the said Act, 1947. She was continuously working in establishment of the Party II from 15-1-96 to 11-7-2000.

The Party II did not comply with provisions contained in Sec. 25-F of the said Act, 1947. The Party II did not prepare seniority list as required under provisions of Section 25-G of the said Act, 1947. Termination of her service by the Party II is illegal and unjustified. She was not given an opportunity before the Party II terminated her service, and as such, the termination of her service is in violation of principle of natural justice. The Party II recruited new employee by name Marcelina in her place, and thereby, contravened provisions contained in Sec. 25-H of the said Act, 1947. At the time of termination of her service her salary was Rs. 6,930/- p.m. Since termination of her service, she is unemployed. Therefore, by presenting the claim statement, she has prayed for holding that she is a 'workman' as defined under Sec-2-(s) of the said Act, 1947, and for reinstatement in service with full back wages and with continuity of service.

4. The Party II presented its written statement on 26-2-2001 at Exb. 5. It appears from written statement that, the Party I was discharging duties of managerial, administrative and supervisory nature. She was earning wages of more than Rs. 1,600/- p. m. at the time of termination of her service. She is not a 'workman' within meaning of Sec. 2(s) of the said Act, 1947. Therefore, the reference is bad in law and same is not maintainable. She is not covered by Standing Orders/Model Standing Orders. There are no Certified Standing Orders applicable to the Party II. She was working in Personnel Department headed by Personnel Manager. She was discharging duties of Personnel Manager in absence of Personnel Manager. There were five workers in Personnel Department. All of them were working directly under her supervision and control. As a Personnel Executive she was responsible for maintenance of various registers which were required under law. Duties performed by her were not of clerical nature. Since she is not a 'workman', question of compliance with provision contained in Sec. 25-F of the said Act, 1947, does not arise. The Party II did not contravene provisions contained in Sec. 25-G and Sec. 25-H also of the said Act, 1947. Pursuant to contract of service, the Party I is paid with all legal dues including notice pay. She is not entitled to any of the reliefs claimed by her. Therefore, the Party II has entreated for rejection of the reference.

5. The Party I submitted rejoinder on 14-3-2001 at Exb. 6. To put in nutshell, all contentions which are raised by the Party II in its written statement (Exb. 5) and which are adverse to the interest of the Party I are denied by her in the Rejoinder. It is needless to reiterate the denials.

6. On basis of pleadings, the then learned Presiding Officer framed issues on 29-3-2001 at Exb. 7. The issues are re-cast by me at Exb. 15. The parties did not lead additional evidence, if any after recasting of the issues which are as follows:

1. Whether Party I is a 'workman' as defined under Section 2 (s) of the Industrial Disputes Act, 1947?

2. Whether the reference is bad in law?

3. Does the Party I prove that termination of her services w.e.f. 11-7-2000 by the Party II is illegal and unjustified?

4. To what relief the Party I is entitled?

5. What Award?

7. My findings on the above issues are as follows:

1. In the affirmative.
2. In the negative.
3. In the affirmative.
4. Entitled to declaration that she is a 'workman'and to reinstatement in service with full back wages and with continuity of service.
5. As per final order.

REASONS

8. *Issue No. 1*:- The Party I examined herself at Exb. 10. It appears from her evidence that she was appointed in establishment of Party II under letter dated 15-1-1996. Xerox copy of appointment letter which is at Exb. W-1 discloses that she was appointed as Personnel Secretary/Supervisor in establishment of Party II w.e.f. 15-1-1996. She was confirmed in service w.e.f. 1-8-1996. Xerox copy of confirmation letter is at Exb. W-2. She was promoted to the post of Personnel Executive/Secretary in establishment of Party II under letter dated 1-1-1999. Xerox copy of promotion letter is at Exb. W-3. She was confirmed as Personnel Executive/Secretary w.e.f. 1-8-1999 under letter of which xerox copy is at Exb. W-4.

9. According to the Party I, she was working under supervision of Personnel Manager, Ms. Loyola Fernandes in Personnel Department of Party II. She was doing work of maintaining various registers including E.S.I. registers, leave register, employment register, salary register and advance register. She was preparing Labour Welfare Fund registers, E. S. I. challans, E. S. I. returns and salary slips which were required to be issued to employees. She was maintaining registers of uniforms and lockers given to staff members. She was doing typing work on computer. Nobody was working under her supervision. The duties which she was discharging were of clerical nature.

9-A. The Party II examined the then Personnel Manager, Ms. Loyola Fernandes on its behalf at Exb. 12. She is working in establishment of Party II as a Group Human Resources Manager. The duties which she was discharging as a Personnel Manager were of supervisory, managerial and administrative nature. She further pointed out that the Party I was working in the Supervisory Grade-II. The Party I after promotion was reporting to her as well as to the General Manager. The Party I was assisting in her administrative, executive and managerial work. The Party I was discharging the same duties in her absence also. The Party I after her promotion was not governed by settlements signed by union with management. Terms and conditions of service of Party I where the same which were applicable to all the executives. Timekeepers were reporting to the Party I. Timekeepers were distributing under supervision of Party I keys of lockers to workers. Distribution of uniform to workers was being done under supervision of Party I. Computerised statement, after the same were certified by her or by the Party I, were being sent to Accounts Department. The Party I was authorized to issue requisition of materials and to write letters to union on behalf of management. The Party I was working independently.

10. Section 2(s) of the said Act, 1947, defines 'workman' as follows:

> *"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, of whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-—*
>
> *(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
>
> *(ii) who is employed in police service or as an officer or other employee of a prison; or*
>
> *(iii) who is employed mainly in managerial or administrative capacity; or*
>
> *(iv) who, being in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, wither by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.*

11. When the Party I was initially appointed in establishment of Party II as Personnel Secretary/ /Supervisor, her gross salary was Rs. 3,200/-p.m. This fact becomes clear from xerox copy of appointment letter (Exb. W-1). At the time of termination of her service, she was working as Personnel Executive/Secretary. Para No. 18 of claim statement discloses that her last drawn salary was Rs. 6,930/-p. m. which exceeds wages of Rs. 1,600/-per mensem.

12. Representative of the Party I argued that, service conditions of the Party I were governed by Standing Orders Rules, Regulations & Instructions for the time being in force as stated in appointment letter (Exb.W-1) and also in promotion letter (Exb. W-3). Therefore, according to him, it will have to be held that the Party I is a "workman" within meaning of Sec. 2(s) of the said Act, 1947. In support of his argument, he relied upon decision given by the Hon'ble High Court

of Bombay in case between *S. A. Sarang and W. G. Forge & Allied Industries Ltd., & Ors.,* reported in *1996, I LLJ, 67*. The Hon'ble High Court in this reported case held the petitioner to be a 'workman' within Sec. 2(s) of the said Act, 1947, mainly on the ground that the employer was estopped from denying due to consistent treatment of the Petitioner as one covered by the Model Standing Orders which indisputedly applied only to workman.

13. Learned advocate of Party II assailed argument advanced by learned advocate of Party I, on ground that, there is no reference either in the appointment letter or in promotion letter that the service of the Party I shall be governed either by Model Standing Orders or by Certified Standing Orders applicable to the parties. There are different standing orders at each level depending upon category of employees. Therefore, the Party I cannot claim, that her service was governed by standing order applicable to workman/employee.

14. Sec. 2 (i) of the industrial employment (standing orders) Central Act, 1946, and which is pointed out by representative of the Party I makes it clear that the workman has meaning assigned to it in clause (s) of Sec. 2 of the said Act, 1947. Xerox copy of appointment letter (Exb. W-1) supports argument of representative of the Party I that, service of the Party I as Personnel Secretary/Supervisor was governed by the standing orders. Neither the Party I nor the Party II produced the said standing orders on record. In my view, the Party II was in a better position to produce on record the standing orders which were applicable to the Party I and to the similar category of the employees. The Party II also did not choose to do so. It will not be out of way if adverse inference is drawn against it. I, therefore, do not agree with argument advanced by learned advocate of Party II that, the standing orders which were made applicable to the service of the Party I at the time of her appointment were not applicable to workman/employee.

15. I have gone through promotion letter of which xerox copy is produced at Exb. W-3. It appears from this promotion letter that, any rules, regulation and orders by the company and applicable to the employees in the executive cadre were also applicable to the Party I since after her promotion to the post of Personnel Executive/ /Secretary. The promotion letter nowhere speaks that her service after promotion was governed by standing orders of the Party II. In other words, the Party I, since after her promotion to the post of Personnel Executive/ /Secretary is not treated as one covered either by the Model Standing Orders or by Certified Standing Orders or by Standing Orders applicable to workman. I, therefore, do not agree with argument advanced by representative of the Party I.

16. Representative of the Party I further argued that, though, appointment of the Party I was on the post of Personnel Secretary/Supervisor, nature of duties which the Party I was discharging will certainly go to show that the Party I was discharging duties of clerical nature. Not only that, even after promotion of Personnel Executive/Secretary, she was discharging the same duties. Therefore, according to him, it will have to be held that the Party I is a 'workman' within meaning of Sec. 2(s) of the said Act, 1947. In support of his argument, he relied upon decisions from reported cases which I am going to refer.

17. In case of *Anand Regional Co-op. Oil, Appellant, v/s Shaileshkumar Harshadbhai Shah, Respondent, reported in 2006 SCC (L&S) 1486*, respondent had stated in his evidence that he was Head of the Department and there was no officer superior to him except the Managing Director. Although he stated that, as a senior, he gave guidance, he did not state that he was authorized to initiate any departmental proceeding against his sub-ordinates.

The Hon'ble Supreme Court held that, therefore, judging by the standard, the respondent did not come within the purview of the exclusionary clause of the definition of 'workman', The Hon'ble Supreme Court further held that:

> *"Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee or the name assigned to the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work was required to be supervised. Being incharge of the section alone, and that too, a small one, and relating to quality control would not answer the test. A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc., the work involves exercise of tact and independence."*

18. In case of *Ved Prakash Gupta, appellant, v/s M/s. Delton Cable India (P) Ltd., Respondent, reported in 1984 SCC (L&S) 281* substantial duty of the appellant was only that of a Security Inspector at the gate of the factory premises. The Hon'ble Supreme Court held that the duty was neither managerial nor supervisory in nature in the sense in which those terms are understood in industrial law and that, therefore, the appellant clearly falls within the definition of a 'workman' in Sec. (s) of the I. D. Act, 1947.

19. The Hon'ble Supreme Court held in case between *Arkal Govind Raj Rao, and Ciba Geigy of India Ltd., Bombay*, decided on May 6, 1985 (Civil Appeal No. 2638/ /1980) of which xerox copy is placed before me, that:

> *"When an employee has multifarious duties and a question is raised whether he is a workman or not, the Court must find out what are the primary and*

basic duties of the persons concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties, these additional duties cannot change character and status of the person concerned. In other words, the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person."

20. Learned advocate of Party II in reply argued that, the Party I was discharging duties of Personnel and Administrative Manager in presence and also in absence of the Personnel & Administrative Manager, Ms. Loyola Fernandes. The Party I was issuing material requisition slips, sending letters, issuing certificates and notices, signing petty cash vouchers, application for advances, clearance memos, letters and was receiving reports and formats under ESIC Scheme. She was doing such duties independently. Not only that, the timekeepers who were working in Personnel Department were working under her supervision. Nature of all the duties and also of the duties stated by the then Personnel Manager, Ms. Loyola Fernandes will certainly go to show that, the Party I was discharging duties of administrative and supervisory nature. She was earning wages of more that Rs. 1,600/- per mensem. While deciding question as to whether a particular employee is a workman, nature of the duties performed by him requires to be taken into consideration. In the present case, if nature of the duties performed by the Party I is taken into consideration, according to him, it will clearly emerge that the Party I will come within the purview of exclusionary clause (iv) of the definition of 'workman' provided under Sec. 2 (s) of the said Act, 1947. To substantiate his arguments, he also relied upon decisions from various reported cases which are necessary to be referred.

21. In case of *M/s. Prakash Talkies, Badaun v/s State of Uttar Pradesh and others* reported in *2003 LLR* 1133 the Hon'ble High Court of Allahabad held that:

"Mere nomenclature of the post is not a determinative factor as to whether an employee is a 'workman' or not under the Industrial Disputes Act but the substantial part or the main nature of the work performed, the responsibilities of the post, also whether the employee could take independent decisions and bind the establishment etc. are the main factors which have to be considered before concluding whether an employee is a 'workman' or not"

22. The Hon'ble Supreme Court held in case between *S. K. Maini and M/s. Carona Sahu Co., Ltd., and Ors., reported in 1994 II LLJ 1153* that:

"The designation of an employee is not of much importance. What is important is the nature of duties. The determinative factor is the main duties and not some work incidentally done. If the employee is mainly doing supervisory work, but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory work. Conversely, if the main work is manual, clerical or of a technical nature, the mere fact that some supervisory or other work, is also performed by the employee incidentally or only for a fraction of time is devoted to some supervisory work, the employee will come under the definition of workman in Sec. 2(s) of the Act."

23. In case of management of M/s. *Sonepath Co-op Sugar Mills v/s Ajit Singh reported in 2005 LLR 309* respondent was appointed as Legal Assistant. Nature of his duties was to draft pleadings, to give opinions to Management, to represent appellant in all types of cases and to conduct departmental inquiries. He was not performing any stereo-type job and his job involved creativity. In light of this fact, the Hon'ble Supreme Court held that the respondent would not fall in definition of workman. The Hon'ble Supreme Court further held in this case that:

"A person would come within the purview if he was employed in any industry and performed any manual, unskilled, skilled, technical, operational, clerical or supervisory work."

24. In case between *C. Gupta and Glaxosmithklin pharmaceutical Ltd., reported in 2004 (1) LLN 989*, the petitioner was appointed in Management Staff, Grade-II. Letter of appointment stated that his services could be terminated without assigning reasons and on giving not less than three months notice. The petitioner on being terminated, challenged termination of his service on grounds that he was a 'workman' under the said Act, 1947 and for non compliance of Section 25-N. The Hon'ble High Court of Bombay held that, nature of duties and conditions of service of petitioner would overwhelmingly fall within the managerial cadre and that, the petitioner would stand excluded from the definition of the term 'workman' under Sec. 2(s) even if he could be said to be doing technical work.

25. In case of *Ganesh Prasad Pandey, Petitioner v/s K. W. Thakre and another, Respondent reported in 1999 1 CLR 78*, duties which were required to be discharged by the petitioner-employee were clearly indicative of the fact that the petitioner was supervising accounts section of the factory division of which he was Head. Therefore, the Hon'ble High Court of Bombay confirmed that the petitioner-employee was not 'workman' u/s 2(s) of the said Act, 1947.

26. In case of *Apparao Basavannappa Manore and M/s. Wandleside National Conductors Ltd., & Ors., reported in 1995 1 LLJ 243*, the petitioner was working in supervisory capacity. He was entrusted with work of collecting certain data alongwith his maintenance

activities and he was also looking after the work of maintenance personally in the absence of Charge Head. The Hon'ble High Court of Bombay held that merely because the petitioner was collecting and assessing data, it cannot be said that he was a clerk and a workman.

27. In case between *Narsinha Anant Joshi and Centuary Shipping and other, reported in 1994 II LLN 928* petitioner was employed mainly in administrative capacity and any clerical work done by him was only incidental to his employment in administrative capacity. The Hon'ble High Court of Bombay held that the Labour Court was justified in holding the petitioner not a 'workman'.

28. Cumulative effect of all decisions from reported cases referred to above cleary establishes one fact that while deciding question as to whether an employee is a 'workman' mere nomenclature of the post is not determinative factor and that the question requires to be decided with reference to principal duties and functions of the employee. At this juncture, it will be appropriate to have reference of tests laid down by the Hon'ble High Court of Bombay in case between *Union Carbide (India) Ltd., and D. Samuel and others reported in 1998 (80) FLR 684*, for determination of question as to whether an employee is supervisor or workman. These tests are as follows:-

(a) Whether the employee can examine the quality of work and whether such work is performed in satisfactory manner or not?

(b) Does the employee have powers of assigning duties and distribution of work?

(c) Can he indent material and distribute the same amongst the workmen?

(d) Even though he has no authority to grant leave, does he have power to recommend leave?

(e) Are there persons working under him?

(f) Has the power to supervise the work of men and not merely machines?

(g) Does he mark the attendance of other employees?

(h) Does he write the confidential reports of his subordinates?

29. Neither letter of appointment (Exb. W-1) nor promotion letter (Exb. W-3) gives specifications or particulars of job which was required to be performed by the Party I as Personnel Secretary/Supervisor, and as Personal Executive/Secretary respectively. The witness Ms. Loyola Fernandes was the then Personnel Manager in Personnel Department of Party II and in which the Party I was working. This witness admitted in her cross-examination that the Personnel Department was maintaining records of ESI Scheme, Labour Welfare Fund, Advances to staff members, Compensatory Holidays, joining formalities of new employees and issuance of lockers and of uniforms etc. Nature of this work is certainly of clerical nature. She did not disclose in her evidence as to who was entrusted with this work.

30. Material requisition slips, sixteen in number, of which true copies are produced at Exb. E-1 colly are issued by the Party I. Letter addressed to the President of Hotel Royal Goan Beach Club Employees Union of which true copy is produced at Exb. E-2, Certificates for permanent disablement benefit, two in number, of which true copies are produced at Exb. E-3 colly, Certificates issued in the name of employees, three in number, of which true copies are produced at Exb. E-4 and E-5 colly, notices, twenty-one in number, of which true copies are produced at Exb. E-6 colly are signed by the Party I for an on behalf of the witness Ms. Loyola Fernandes, the then Personnel & Administrative Manager. Petty cash vouchers, twenty-five in number, of which true copies are produced at Exb. E-7 colly are signed by the Party I as Head of the Department. Applications for advances, eleven in number, of which true copies are produced at Exb. E-8 colly are signed by the Party I as Personnel & Administrative Manager. Clearance memos, four in number, of which true copies are produced at Exb. E-9 colly, are signed by the Party I as Personnel Executive. Letters addressed to Restaurant Manager, Front Office Executive and Accounts Manager, three in number, by Personnel & Administrative Manager and of which xerox copies are produced at Exb. E-10 colly are signed by the Party I for and on behalf of Ms. Loyola Fernandes, the then Personnel Manager. Authorisation slips to issue articles of uniform or equipment, four in number, of which xerox copies are produced at Exb. E-11 colly are signed by Party I. Day Shift Reports for the period from 22-5-99 to 18-6-99 of which xerox copies are produced at Exb. E-12 colly and from 18-11-99 to 23-11-99 produced at Exb. E-13 colly are received by the Party I. Format of ESI Scheme and of which xerox copy is produced at Exb. E-14 is signed by Party I for and on behalf of Ms. Loyola Fernandes, the then Personnel Manager.

31. On basis of documentary evidence referred to above, learned advocate of the Party II tried to impress that the duties which were being performed by the Party I were of administrative/executive nature. The Party II admitted in her cross examination that, she was on maternity leave during period from 1-12-99 to 14-3-2000. It cannot be said by any stretch of imagination that, the documents which are signed by the Party I for and on behalf of the Personnel Manager are signed by her in her capacity as Personnel Executive/Secretary. She was never appointed as Head of the Department or as Personnel & Administrative Manager. Therefore, it cannot be said that the documents signed by her as Head of the Department and as Personnel & Administrative Manager and which are produced at

Exb. E-7 colly and at Exb. E-8 colly respectively, are signed by her in her capacity as the Personnel Executive/Secretary. Only the documents which are in the shape of Material Requisition Slips (Exb. E-1 colly), Clearance Memos (Exb. 9) and authorization slips (Exb. E-11 colly) remain there which appears to have been signed by the Party I in her capacity as Personnel Executive. In addition, there are reports (Exb. 12 colly and Exb. 13 colly) which are received by her. These documents, in my view, will not be sufficient to hold that issuance of material requisition slips, clearance memos, authorization slips and receipt of reports was her principal duty and function. There is no corroboration to evidence of the then Personnel Manager to hold that the timekeepers were working under supervision of the Party I, and that, the Party I was discharging her duties independently. There is no sufficient and convincing evidence on behalf of the Party II to fulfill the tests laid down by the Hon'ble High Court of Bombay in case of *Union Carbide (India) Ltd.,* to hold that the Party I was discharging duties of supervisory nature. It reveals that the Party I was in fact appointed to do work as a 'workman', but, it was under nomenclature of the post of Personnel Secretary/ /Supervisor and then of Personnel Executive/Secretary on promotion. It must be with intention that in case if situation arises, she should not avail remedies available to workman under the said Act, 1947. Considering nature of the duties which the Party I was discharging as Personnel Secretary/Supervisor and then as Personnel Executive/Secretary, case made out by her that she was doing work of manual and clerical nature and as such she is a workman, appears to be more probable, convincing and trust-worthy than that of the Party II. I, therefore, answer the issue in the affirmative.

32. *Issue No. 2*:- The Party II raised plea in its written statement that the reference is not maintainable mainly on the ground that the Party I is not a 'workman' as defined under Sec. 2(s) of the said Act, 1947. It is proved that the Party I is a 'workman'. The plea raised by Party II is devoid of merits and as such, it must fall to the ground.

33. The Government of Goa is of the opinion that an Industrial Dispute exist between Party I and management of the Party II. Therefore, by order dated 24-11-2000, it has referred the dispute for adjudication to this Industrial Tribunal. The dispute is in between employee and employer i.e. between the Party I and Party II respectively and it is connected with employment of the Party I. It follows that, there is an industrial dispute as laid down by Sec. 2(k) of the said Act, 1947. In view of this position and above discussion, it cannot be said that the reference is bad in law. My answer to the issue is in negative.

34. *Issue No. 3*:- The Party II terminated service of the Party I w.e.f. 11-7-2000. This fact becomes clear from averments in para 8 of claim statement and which are admitted to be correct by Party II in para 8 of claim statement and which are admitted to be correct by Party II in para 8 of its written statement. The Party I has claimed termination of her service as illegal and unjustified on the grounds that the Party II did not comply with provisions contained in Sec. 25-F, 25-G and 25-H of the said Act, 1947.

35. Sec. 25-F of the said Act, 1947 lays down that:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Sec. 25-G of the said Act, 1947 lays down that:

"Where any workman in an industrial establishment, whom is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenchs any other workman".

Section 25-H of the said Act, 1947 lays down that:

"Where any workmen are retrenched, and the employer proposed to take into his employ any person, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons".

36. It is an admitted fact that the Party II did not comply with conditions precedent to retrenchment of workman and which are laid down by Sec. 25-F of the said Act, 1947, while terminating service of Party I.

37. The Party I pleaded in its claim statement that the Party II did not prepare seniority list of employees as required u/s 25-G of the said Act, 1947, and therefore, termination of her service is illegal and unjust. There is

no evidence on behalf of the Party I to prove that the employer i.e. the Party II did not retrench the workman who was the last person to be employed in the category in which she was working. To be more specific, the Party I did not prove that there was employee junior to her in the category in which she was working, and that, instead of terminating the services of that last junior employee, the Party I terminated her service. Under these circumstances, it will not be correct to conclude that the Party II terminated her service by committing breach of provision contained in Sec. 25-G of the said Act, 1947.

38. Sec. 25-H of said Act, 1947, has no bearing on merits of termination of service of workman. This section casts obligation on part of the employer to give an opportunity to the retrenched workman, if the employer proposes to take into his employ any person. I, therefore, hold that the Party I is not entitled to rely upon provision contained in Sec. 25-H of the said Act, 1947, to prove that termination of her service by the Party II is illegal and unjustified.

39. Since the Party II did not comply with provisions contained in Sec. 25-F of the said Act, 1947, only on this ground, I hold that the termination of service of Party I is illegal and unjustified. I, therefore, answer the issue in the affirmative.

40. *Issue No. 4*:- As per provision contained in Section 11-A of the said Act, 1947, if the Labour Court, Tribunal or National Tribunal as the case may be is satisfied that the order of discharge or dismissal was not justified, it may, by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the Award of any lesser punishment in lieu of discharge, or dismissal as the circumstances of the case may require.

41. I am satisfied that, termination of service of Party I by the Party II is unjustified. The Party II after terminating service of the Party I has appointed Ms. Marcelina as Personnel Assistant in Personnel Department, where the Party I was working in establishment of the Party II. Appointment of Ms. Marcelina is admitted by the then Personnel Manager in her evidence. In case if the termination of service of workman is proved to be illegal and unjustified, normal rule or practice is to reinstate the workman with full back wages and with continuity in service. There is nothing in evidence led by the Party II to hold that there should be departure from this normal rule or practice. Further, it has also come in evidence of the Party I that, since after the termination of her service, she is unemployed. Evidence led by the Party II does not disclose that the Party I is gainfully employed during the enforced idleness. Considering all these circumstances, I hold that it will be just and proper if the Party I is reinstated in service with full back wages and with continuity in service. I, therefore, hold that she is entitled to the reliefs as prayed for in para 21 (a) and (b) of the claim statement.

42. As a result of findings given to issues number 1, 3 and 4, I proceed to adjudicate the dispute by passing the following order:-

ORDER

1. It is hereby adjudicated that the Party I Miss Escolastica Gracias, is a 'Workman' within meaning of Section 2(s) of the Industrial Disputes Act, 1947.

2. It is hereby adjudicated that the action of the management of M/s. Royal Goan Beach Resort Ltd., Colvaddo, Benaulim, Goa (Party II) in terminating the services of Mrs. Escolastica Gracias (Party I) w.e.f. 11-7-2000 is illegal and unjustified.

3. Termination of service of the Party I by the Party II w.e.f. 11-7-2000 is set aside.

4. The Party I/Workman is entitled to reinstatement in service in establishment of the Party II with full back wages and with continuity in service.

5. No order as to costs.

6. The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-cum-
Labour Court-I,

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